

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON
AT SPOKANE

JOE JARVIS,

Plaintiff,

v.

JOHN JANNEY, and CHELAN
COUNTY P.U.D. NO. 1,

Defendants.

JOHN SMITH,

Plaintiff,

v.

JOHN JANNEY, and CHELAN
COUNTY P.U.D. NO. 1,

Defendants.

No. CV-11-321-RMP

ORDER GRANTING IN
PART AND DENYING IN
PART THE PARTIES'
STIPULATED MOTION FOR
PROTECTIVE ORDER

This matter comes before the Court on the parties' stipulated motion for a protective order and proposed protective order, **ECF No. 32**.

1 A portion of the parties' stipulated protective order affects the treatment of
2 future court documents in this case. ECF No. 32 at 8, 12. There is a strong
3 presumption in favor of public access to court documents. *Kamakana v. City and*
4 *County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006). Therefore, a party
5 seeking to seal a judicial record "bears the burden of overcoming this strong
6 presumption by meeting the 'compelling reasons' standard." *Kamakana*, 447
7 F.3d at 1178. Specifically, "[t]he party must 'articulate [] compelling reasons
8 supported by specific factual findings [...] that outweigh the general history of
9 access and the public policies favoring disclosure, such as the public interest in
10 understanding the judicial process.'" *Kamakana*, 447 F.3d at 1178–79 (internal
11 quotations omitted); *see also Pintos v. Pacific Creditors Assn.*, 605 F.3d 665,
12 678-79 (9th Cir. 2010) (a motion to seal documents that are part of the judicial
13 record is governed by the "compelling reasons" standard rather than the "good
14 cause" standard for "private materials unearthed during discovery" contemplated
15 by Fed. R. Civ. P. 26(c)).

16 However, the parties' motion states only that "discovery in this case will
17 likely seek disclosure of confidential financial information, personnel/employee
18 information, business information, or other information of a sensitive or private
19 nature," without any more specific justification as to why the purportedly
20 confidential information deserves to be sealed.

1 Accordingly, the Court **GRANTS IN PART** and **DENIES IN PART** the
2 parties' motion for a protective order, **ECF No. 32**, and enters a modified version
3 of the parties' protective order as Appendix A to this order.

4 The District Court Executive is directed to enter this Order and provide
5 copies to counsel.

6 DATED this 20th day of December 2011.

7
8 s/ Rosanna Malouf Peterson
9 ROSANNA MALOUF PETERSON
Chief United States District Court Judge

10 **Appendix A: PROTECTIVE ORDER**

11 Pursuant to FRCP 26(c), and according to the Stipulation of the parties, it
12 is ORDERED as follows:

13 1. Any documents produced by a party in this action which are, in good
14 faith, determined by the producing party to contain confidential or proprietary
15 information, including without limitation financial information, trade secrets,
16 personnel and payroll information, business planning or strategy information, or
17 other commercially sensitive or personally sensitive information of a non-public
18 nature, may be designated as "CONFIDENTIAL," and so marked, by stamping
19 each page of the document CONFIDENTIAL. If the document is more than
20 twenty five (25) pages in length, stamping the front page CONFIDENTIAL shall

1 be sufficient to cover the entire document under this Protective Order. In the
2 event that a party inadvertently fails to stamp or otherwise designate a document
3 as CONFIDENTIAL at the time of its production, that party shall have twenty
4 (20) business days after discovery of such error to so stamp or otherwise
5 designate the document. The parties shall act in good faith and on a reasonable
6 basis when designating non-public documents in the following categories

7 **CONFIDENTIAL:**

- 8 (a) Personnel files of employees;
- 9 (b) Payroll information;
- 10 (c) Salary information;
- 11 (d) Salary surveys;
- 12 (e) Salary guidelines and pay-grade levels;
- 13 (f) Social Security numbers;
- 14 (g) Information obtained from and regarding Public Utility District
15 No. 1 of Chelan County, Washington ("P.U.D. No. 1") customers/clients,
16 including but not limited to financial and other information disclosed to P.U.D.
17 No. 1 for purposes of obtaining its products and services;
- 18 (h) Financial information of the parties not subject to public disclosure;

1 (i) Any other information not in the public domain and that is
2 reasonably and in good faith believed by the producing party to contain trade
3 secret, proprietary, or highly-sensitive business information;

4 (j) Medical records and healthcare information.

5 2. Documents falling within the scope of Paragraph 1 that the
6 producing party in good faith reasonably believes contain particularly sensitive
7 confidential material warranting further restrictive disclosure may be designated
8 "ATTORNEYS' EYES ONLY." Such documents may include but are not
9 limited to non-public personal financial information and non-public
10 commercially sensitive competitive information. Publicly available documents
11 may not be designated ATTORNEYS' EYES ONLY. Procedures identified in
12 Paragraph 1 regarding designation of CONFIDENTIAL documents applies with
13 equal force to documents designated ATTORNEYS' EYES ONLY.

14 3. When used in this Order, the word "documents" means all written,
15 recorded or graphic matter whatsoever, however created and whatever the
16 medium on which it was produced or reproduced, including, but not limited to,
17 documents produced by any party, whether pursuant to FRCP 33 or 34,
18 subpoena, public records request under Washington State law, or by agreement,
19 and may also include deposition transcripts and exhibits, and any portions of any
20 court papers which quote from or summarize any of the foregoing.

1 4. The parties contemplate that certain information falling into the
2 categories set forth above may be produced electronically, and that the electronic
3 media (e.g., CD-ROM) will be stamped with a CONFIDENTIAL or
4 ATTORNEYS' EYES ONLY designation, while the electronic version of
5 documents themselves may not. For ease of production, any electronic records
6 which are so produced shall be treated as bearing the designation stamped on the
7 source electronic media, and documents printed from such electronic records
8 shall be automatically accorded corresponding protective status pursuant to this
9 Order.

10 5. All documents designated CONFIDENTIAL or ATTORNEYS'
11 EYES ONLY, and all information contained therein, shall be used by the
12 party(ies) to whom the documents are disclosed solely for the prosecution and/or
13 defense of this action, and shall not be further disseminated, except as
14 specifically set forth below.

15 6. Except with prior written consent of the party asserting confidential
16 treatment, documents designated CONFIDENTIAL and the information
17 contained therein may be disclosed only to the following persons:

18 (a) Counsel for the party(ies) to whom the confidential disclosure
19 has or is to be made, and secretaries, paralegal assistants, and other employees of
20 such counsel who are assisting counsel in the prosecution or defense of this

1 action. Counsel shall be responsible for ensuring that his or her associates and
2 employees are informed of the terms of this Order and agree to abide by them;

3 (b) The parties to this litigation, provided they are informed of the
4 terms of this Order and agree to abide by them;

5 (c) Outside consultants and experts retained by any party for the
6 purpose of assisting in the prosecution or defense of this action, but only after the
7 consultant or expert has read this Order and agrees in writing to be bound by it,
8 as set forth in Exhibit A. Upon Order of this Court, for good cause shown, these
9 agreements shall be available for inspection by counsel for the party producing
10 the confidential documents;

11 (d) Deposition witnesses during their depositions, or trial
12 witnesses at trial, when necessary for, or otherwise relevant or helpful to, such
13 witness's testimony, provided that confidential documents and the information
14 contained therein may be disclosed to non-party deposition or trial witnesses only
15 after the witness has read this Order and agrees in writing to be bound by it, as set
16 forth in Exhibit A. Upon Order of this Court, for good cause shown, these
17 agreements shall be available for inspection by counsel for the party producing
18 the confidential documents;

1 (e) With respect to a particular document, an individual who is
2 shown on the face of the document to have been an author, source, or recipient of
3 the document;

4 (f) Graphics, translation, or design services retained by counsel
5 for purposes of preparing demonstrative or other exhibits for deposition, trial, or
6 other court proceedings in the action; non-technical jury or trial consulting
7 services, not including mock jurors, who have signed the form attached hereto as
8 Exhibit A. Upon Order of this Court, for good cause shown, these agreements
9 shall be available for inspection by counsel for the party producing the
10 confidential documents;

11 (g) Independent stenographic reporters and videographers
12 retained to record and transcribe testimony in connection with this action,
13 provided that confidential documents and the information contained therein may
14 be disclosed to such individuals only after they have read this Order and agree in
15 writing to be bound by it, as set forth in Exhibit A. Upon Order of this Court, for
16 good cause shown, these agreements shall be available for inspection by counsel
17 for the party producing the confidential documents; and

18 (h) The Court, its personnel and stenographic reporters (under
19 seal or with other suitable precautions determined by the Court).

1 7. Except with prior written consent of the party asserting confidential
2 treatment, documents designated ATTORNEYS' EYES ONLY and the
3 information contained therein may be disclosed only to the following persons:

4 (a) Counsel for the party(ies) to whom the disclosure has or is to
5 be made, and secretaries, paralegal assistants, and other employees of such
6 counsel who are assisting counsel in the prosecution or defense of this action.

7 Counsel shall be responsible for ensuring that his or her associates and employees
8 are informed of the terms of this Order and agree to abide by them;

9 (b) Outside consultants and experts retained by any party for the
10 purpose of assisting in the prosecution or defense of this action, but only after the
11 consultant or expert has read this Order and agrees in writing to be bound by it,
12 as set forth in Exhibit A. Upon Order of this Court, for good cause shown, these
13 agreements shall be available for inspection by counsel for the party producing
14 the confidential documents;

15 (c) With respect to a particular document, an individual who is
16 shown on the face of the document to have been an author, source, or recipient of
17 the document;

18 (d) Graphics, translation, or design services retained by counsel
19 for purposes of preparing demonstrative or other exhibits for deposition, trial, or
20 other court proceedings in the action; non-technical jury or trial consulting

1 services, not including mock jurors, who have signed the form attached hereto as
2 Exhibit A. Upon Order of this Court, for good cause shown, these agreements
3 shall be available for inspection by counsel for the party producing the
4 confidential documents;

5 (e) Independent stenographic reporters and videographers
6 retained to record and transcribe testimony in connection with this action,
7 provided that confidential documents and the information contained therein may
8 be disclosed to such individuals only after they have read this Order and agree in
9 writing to be bound by it, as set forth in Exhibit A. Upon Order of this Court, for
10 good cause shown, these agreements shall be available for inspection by counsel
11 for the party producing the confidential documents; and

12 (f) The Court, its personnel and stenographic reporters (under
13 seal or with other suitable precautions determined by the Court).

14 8. The recipient of any document designated CONFIDENTIAL or
15 ATTORNEYS' EYES ONLY that is provided under this Order shall maintain
16 such records in a secure and safe area and shall exercise a professional standard
17 of due and proper care with respect to storage, custody, use and/or dissemination
18 of such records, which standard shall not be less than as is exercised by the
19 recipient with respect to its own proprietary information.
20

1 9. A party shall not be obligated to challenge the propriety of a
2 CONFIDENTIAL or ATTORNEYS' EYES ONLY designation at the time made,
3 and failure to do so shall not preclude a subsequent challenge thereto. Failure to
4 challenge the propriety of any CONFIDENTIAL or ATTORNEYS' EYES
5 ONLY designation shall not constitute an admission as to the propriety of that
6 designation. In the event that any party decides to challenge a CONFIDENTIAL
7 or ATTORNEYS' EYES ONLY designation at any stage of these proceedings,
8 such party shall provide to the producing party written notice of its challenge to
9 the designation. The parties shall first try to dispose of such dispute in good faith
10 on an informal basis. If the dispute cannot be resolved, the party challenging the
11 designation may request appropriate relief from the Court pursuant to applicable
12 court rules and other authority. The burden of proving that records have been
13 properly designated as CONFIDENTIAL or ATTORNEYS' EYES ONLY shall
14 be on the party making such designation.

15 10. Each individual who receives any CONFIDENTIAL or
16 ATTORNEYS' EYES ONLY material hereby agrees to subject himself/herself to
17 the jurisdiction of the Court for the purpose of any proceedings relating to the
18 performance under, compliance with or violation of this Order.

19 11. Subject to the Rules of Evidence, CONFIDENTIAL or
20 ATTORNEYS' EYES ONLY information may be offered in evidence in filings

1 with the Court, at trial, or at any court hearing. However, the parties will not file
2 such information with the Court or otherwise use such information in open Court
3 unless it is reasonably necessary to do so. Any party seeking to file or use
4 documents designated as CONFIDENTIAL or ATTORNEYS' EYES ONLY
5 may only file such documents contemporaneously with a motion to seal such
6 documents pursuant to applicable court rules and other authority. Any party may
7 move the Court for an order that such evidence be received in camera or under
8 other conditions to restrict disclosure. A party intending to use or file a
9 document that arguably contains CONFIDENTIAL or ATTORNEYS' EYES
10 ONLY information shall provide seven (7) business days' notice to the other
11 party. This seven (7) business days' notice requirement does not apply to
12 summary judgment motions or any papers filed in support of or opposition to a
13 summary judgment motion.

14 12. The use of documents designated CONFIDENTIAL or
15 ATTORNEYS' EYES ONLY, and information derived therefrom, during the
16 course of the trial of this action shall be governed by further Order of this Court
17 and must meet the compelling reasons standard set out in *Kamakana v. City and*
18 *County of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006), and other Ninth Circuit
19 jurisprudence. Except as to the use at trial of CONFIDENTIAL or
20 ATTORNEYS' EYES ONLY documents and information derived therefrom, this

1 Order shall remain effective until such time as it is superseded by stipulation of
2 the parties or Order of this Court.

3 13. At the conclusion of the litigation of this action, or upon settlement
4 or dismissal, documents designated as CONFIDENTIAL or ATTORNEYS'
5 EYES ONLY, and all copies of such documents (other than exhibits of record),
6 shall, at the direction of the producing party, within sixty (60) days be (i) returned
7 to the producing party and retained thereby for a period of three years from the
8 date the documents were returned, or (ii) destroyed, with the party destroying the
9 documents providing a certificate of destruction to the producing party.

10 14. In the event that any CONFIDENTIAL or ATTORNEYS' EYES
11 ONLY document is used in any hearings or court proceedings, it shall not lose its
12 CONFIDENTIAL or ATTORNEYS' EYES ONLY status as between the parties
13 in this matter outside of litigation through such use. However, any document
14 filed on the record in this matter is public unless it is found by the Court to meet
15 the "compelling reasons" standard. *See Kamakana*, 447 F.3d at 1178-79.

16 15. Nothing in this Order shall prevent any party to this action from
17 moving the Court to remove a CONFIDENTIAL or ATTORNEYS' EYES
18 ONLY designation from a particular document, from seeking modification of this
19 Order or other or further protection or relief, or from objecting to discovery
20 which it believes to be otherwise improper.

EXHIBIT A

**AGREEMENT OF EXPERT, CONSULTANT,
NON-PARTY DEPOSITION OR TRIAL WITNESS,
OR DESIGNATED REPRESENTATIVE
TO BE BOUND BY PROTECTIVE ORDER**

The undersigned, _____ (print or
type name), an expert, consultant, non-party deposition or trial witness, or
designated representative of _____ (print
or type name of party or law firm), in connection with Jarvis v. Janney and
Chelan County P.U.D. No. 1 and Smith v. Janney and Chelan County P.U.D.
No. 1, hereby acknowledges that he or she has received a copy of the
Protective Order entered in these actions, which is attached hereto as Exhibit
A, and has read and agreed to be bound by all of the provisions thereof.

DATED: _____
Signature